IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1633 of 2005
Date of Decision: 12.2.2007

Prabh Dayal ...Appellants

Versus

Manmohan ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sandeep Jasuja, Advocate, for the appellant.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for mandatory injunction to claim possession for the reason that the defendant has entered into the suit property during the pendency of the suit for permanent injunction, has been dismissed.

Both the Courts have discussed the evidence led by the parties to return a finding that the defendant is in possession of the suit property. Therefore, the suit for injunction was dismissed.

Learned counsel for the appellant has vehemently argued that the evidence of the defendant that he has purchased the property from one Fakira was not the stand taken by the said defendant in the written statement and, therefore, the said plea of the defendant cannot be taken into consideration by the Courts below.

In a suit for injunction, the only question required to be decided was of possession. The said question has been decided by the

Courts below on the basis of evidence which was led by the parties. Even the Local Commissioner has found that the walls have been constructed though alleged to be recent. It is the stand of the defendant that the wall was constructed by him. A perusal of the judgment passed by the Courts below shows that no issue regarding title in respect of the suit property was framed.

In view thereof, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present second appeal. Since there was no issue regarding title in the present proceedings, it shall be open to the plaintiff to seek possession on the basis of title in appropriate proceedings.

Hence, the present appeal is dismissed with the above observations.

12-02-2007 (HEMANT GUPTA)
ds JUDGE